Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

REPLY COMMENTS OF PRINCE GEORGE'S COUNTY (MARYLAND)

These Comments are filed by Prince George's County in reply to those comments received by the Federal Communications Commission (the "FCC") from the Telecom Industry, with which comments Prince George's County does not concur, and in support of the comments (and reply comments) filed by or on behalf of the National Association of Telecommunications Officers and Advisors ("NATOA"); The National League of Cities; The National Association of Counties; The U.S. Conference of Mayors; The Alliance for Community Media; and The Alliance for Communications Democracy (hereinafter all collectively included in the term NATOA). Like NATOA, Prince George's County believes that local governments can conduct the franchising process and issue appropriate local franchises for new entrants into the video services field on a timely basis, just as they have for established cable services providers, and in contrast to the allegations of the Telecom Industry. In support of this position, we wish to advise the Commission as follows:

Cable Franchising in Our Community

Community Information

Prince George's County (the "County") has a population of approximately 843,000. Our franchised cable provider is Comcast Cable Communications.

Our Current Franchise

Our current franchise began on June 14, 1999 and expires on June 14, 2014. We are not currently negotiating a franchise renewal with the incumbent provider.

We are, however, currently negotiating a competing franchise with Verizon Maryland, Inc., a telecommunications services provider.

Our franchise requires the cable operator to pay a franchise fee to the County in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. In addition, the cable operator collects and pays to the County a PEG Capital Equipment Support Grant of 3% of Gross Revenues.

We require the cable operator to provide eleven (11) channels for public, educational, and/or governmental ("PEG") access on the cable system. The PEG uses of eight (8) of these channels are determined by the County, with the remaining three (3) being allocated for use by municipalities in the County. There are 27 incorporated municipalities in the County.

The current franchise requires the cable operator to provide an Emergency Alert System in accordance with FCC requirements, and provides operationalrequirements. This emergency alert requirement provides an important avenue of communication with our residents in the event of an emergency.

County law provides for a minimum level of customer service standards for all cable franchise operators in the County, to ensure that the cable operator complies with all applicable laws and regulations and is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

The current franchise provided for a system upgrade and a reasonable build-out schedule for the operator. More importantly, the franchise and the County's franchising law provide that the "franchise area" includes the entire jurisdictional boundaries of the County (exclusive of the independent municipal jurisdictions). As will be discussed below, the goal of universal service availability, subject to reasonable density restrictions, is key to the County's franchising goals and programs, and the County's position that "redlining" or "economic discrimination" is both un-American and antithetical to the goals and aspirations of the County and its citizens. County law and the franchise provide for reasonable density minimums to address cable operator profitability concerns.

Our franchise contains the following insurance and bonding requirements: \$500,000 letter of credit, \$ 20,000,000 performance bond, allowed to reduce to 50% upon completion of system build out. Insurance minimums in the \$ 500,000 to \$ 2,000,000 range are required for property damage, personal injury and death, comprehensive liability, automobile liability. Workers' compensation coverage is required by law. The requirements have not been alleged to be burdensome and are typical requirements given the nature of the business and the potential for damages.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain appropriate permits to access the public rights of way.

The Franchising Process

The cable system serving the County also serves the twenty-seven (27) municipalities in the County. Many of these municipalities adopted the franchise negotiated by the County as their franchise, thus allowing for economies of scale and shortening the length of time to adopt the franchise throughout the County.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. ***Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process*** – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Competitive Cable Systems

The County has actively sought out competitive providers, and has welcomed Verizon Maryland in its request to obtain a cable franchise. Negotiations with Verizon Maryland commenced in late February 2006, and are ongoing. As has been suggested in the initial comments, Verizon Maryland has offered its "franchise template" as a franchise model. The County intends to respond, of course, with its own proposal and the process will be a negotiated one, as contemplated by the Act.

The local cable franchising process is functioning well in Prince George's County. As our experience has shown, the County is experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the public rights of way in a fair and evenhanded manner, that other users of the public rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers *in the public interest*, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington, D. C. to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Specific Observations In Response To Industry Comments

Representative organizations included in our reference herein to NATOA have and will continue to address in honest and stark detail the inadequacies, inaccuracies, and unjustifiable assessments of the industry in its positions on the proposed rule making. The County would be remiss, however, if it did not add its own particular voice to stress the discriminatory, biased, and unwarranted accusations and positions of the industry in its endeavors to railroad both the FCC and local franchising authorities ("LFAs") into a quagmire of federal regulations and the usurpation of lawfully granted powers to appease an overly aggressive industry under the guise of alleged uniformity, speed, and simplicity. We shall address a few of the most egregiously incorrect industry positions below:

a. Local franchising is not outmoded and anachronistic. The industry would have you, Congress, and the people believe that franchising is "monopolistic" and unworthy of our modern times. Sole franchises exist in our jurisdictions ONLY because the industry has ignored the opportunity for so long. The law prohibits mandated monopolies in this business, and consumer economics dictate that single franchises be discouraged. Our citizens clamor for competition and complain often that rates are lower and services are better when there is competition. We agree. The LFAs should not be blamed, however, for the delay of the potential operators. We are aware of no instance where the franchise process has thwarted or prevented competition. Actually, in a broader, but much needed sense, the franchising process insures evenhandedness in the process while at the same time protecting the interests of citizen consumers.

b. Local franchising does not result in undue delay. As NATOA has noted, there has been no cataloguing or itemizing of delay wrought by LFAs. If the FCC is to pay heed to the unsubstantiated anecdotes of the industry in that regard, we urge the FCC to poll the individual jurisdictions for documentation of *industry-generated delay* in the franchise negotiation process. In truth, the process requires a reasonable amount of time for give and take in the process – on the part of the industry to stake out its economies and on the part of the LFA to protect the interest of its citizens. A “cookie-cutter” approach will accomplish one at the expense of the other, and it will be our citizens who suffer the loss.

c. Build out requirements must be preserved. Perhaps the FCC may not be aware of the occasions where franchise seekers have endeavored to exclude areas from coverage, but we in the local government arena are. The FCC’s own data in the record in this matter bears out the intentions of some providers to not seek market penetration for “high-end” services in lower income areas. This is blatant economic discrimination and, in many cities and outlying areas in the United States, will result if *de facto* racial discrimination.

d. PEG requirements and service to local governments and schools must be protected. The Act and the underlying legislative intent specifically include these services and requirements as part of an operator’s franchise “cost.” They are as much a part of the franchise business as the percentage franchise fee itself. To eliminate them, or subsume them within the percentage fee, removes a valuable right or benefit granted by Congress without a scintilla of enabling legislation, and would constitute “regulatory activism” at its worst.

e. The FCC is without legal authority to adopt rules governing § 621 (a)(1). For the reasons stated by the NATOA group, the FCC clearly lacks the authority under the Act to enact rules or regulations in the area of franchise processing. Congress has defined with certainty the areas in which the FCC may regulate and has specifically designated this area to be the jurisdiction of the courts. In an era when federal authorities complain too much of judicial activism, it is disconcerting to see an agency such as the FCC fostering a similar approach in the regulatory arena, thereby removing or interfering with a brightly marked line of authority.

The County will defer to the NATOA group for addressing the balance of the industry positions in detail.

Conclusion

Prince George’s County therefore respectfully requests that the Commission refrain from interfering with local government authority over franchising or otherwise impairing the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants. The status quo in this area has worked, and will continue to work quite well without an additional unwarranted and, in our view, illegal regulatory overlay.

Respectfully submitted,

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